

**Additional comments – specifically applicable to opt-in mailing lists
and subscribed newsletters**

A. MANDATORY RULEMAKING – Determining whether “the primary purpose” of an email message is commercial.

In modifying the Act’s definition of “commercial electronic mail message,” the term “the primary purpose” could be interpreted in many ways. Click the choice below that most closely matches your view of the correct interpretation.

A1. The primary purpose of an email message should be viewed as commercial if:

Other, please specify in the Additional Comments section at the end of this form – **see 3. below**

A3. Are there other ways to determine whether a commercial advertisement or promotion in an email is the primary purpose of the email?

Yes – if it’s from a business in the course of its business it is commercial.

B. Modifying what is a “transactional or relationship message”.

Under the Act, a “transactional or relationship message” is defined as meeting one of seven criteria. As indicated in the choices below, the criteria relate to, for example, whether the message: concerns prior or already-established commercial transactions between sender and recipient; products or services purchased by the recipient; or an ongoing commercial or employment relationship between sender and recipient.

B1. Choose any of the definition(s) below that you feel the Commission should modify or elaborate upon. (Choose all that apply)

E-mail messages that “facilitate, complete, or confirm” a commercial transaction that the recipient has previously agreed to enter into with the sender

A commercial transaction has been entered into as soon as the person “opts in” to the mailing list or subscribes to the newsletter – just because it’s possibly “pre-purchase” does NOT mean there is no transaction – *this must be made clear*

E-mail messages that “provide notification concerning a change in the terms or features” of a subscription, membership, account, loan, or comparable ongoing commercial relationship

Similarly, there is an ongoing relationship as soon as the person “opts in” to the mailing list or subscribes to the newsletter – just because they may not yet have “joined” or purchased from the site or business – *this must be made clear*

E-mail messages that “deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.”

Similarly, the recipient is entitled, and indeed expects, to receive all and any news about products and services as soon as that person “opts in” to the mailing list or subscribes to the newsletter – just because they may not yet be aware of what the email contains they **have requested** to be **kept** informed – **this must be made clear!**

B4. Should transactional or relationship messages that also advertise or promote a commercial product or service be deemed “commercial” messages or should they be deemed “transactional or relationship” messages?

They should be deemed “Transactional or Relationship” messages; **This is essential for the reasons outlined above – basically the person has requested this communication, and should receive it, and continue to receive it, *until they opt-out.***

C. Modifying the 10-business-day time period for processing opt-out requests.

1. Is 10 business days an appropriate deadline for acting on an opt-out request by deleting the requester’s email address from the sender’s email directory or list? And if not, which of the following would be a more appropriate time limit?

No, a time limit of greater than 10 days would be more appropriate – whilst 10 days is sufficient for any fully functional automated system there are many occasions when requests are not received or for some other reason manual intervention is required (eg when a person chooses to unsubscribe by sending a personal email, often the case if the person wishes to elaborate on their reasons, for example). And with more and more genuine emails being filtered out..... and then there are such things as holidays. It should be made a condition of opting in that one accepts the time scale involved in opting out – much like a period of notice. The duration of this period would be **whatever is agreed upon at opt in – 2-4 weeks being more appropriate in many cases.**

E.2 Issuing Regulations to Implement Various Aspects of CAN-SPAM -- “Forward-to-a-friend” scenarios

1. Are there different types of such “forwarding” marketing campaigns?

Yes – the forward to a friend may not be commercially motivated – it may well be, indeed in my opinion very often is, for the purpose of informing the friend of something of interest to them – this can include (but is by no means limited to) health issues, tax issues, spiritual matters etc etc. This process should in **NO way** be interfered with or restricted.

2. Who should be required to provide an “opt-out” mechanism for such a message?

Other, by definition there has not at that stage been an opt in – it’s a one-off, possibly with an option to opt-in but **no more**, therefore **no** opt-out mechanism is required.

Concluding comment:

This “report” and its suggestions appear to far outreach its original purpose. It is clear from the questions, and proffered answers, that it is a very murky area being made murkier all the time. It is largely unworkable, and could be used, or abused, to control virtually all free enterprise on the web. This must not be allowed to happen. Let us not forget that people must be encouraged to be self-responsible – one cannot legislate for everything! S P A M is **bulk unsolicited** email with neither opt-in nor opt-out. Responsible marketing uses **double** opt-in and opt-out (or unsubscribe) and should **in no way be included in or covered by these proposals**.